

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Steven Jay Gross and James Lumley

Date Application filed with the Town Clerk: August 4, 2004

Nature of request: Petitioners seek to modify existing Special Permit ZBA FY 2003-00016, to build a duplex, with changes in the management plan, approval of a new site plan and change of ownership.

Location of property: Old Montague Road (Map 2A, Parcel 38/41, R-O Zone)

Legal notice: Published in the Daily Hampshire Gazette on August 25 and September 1, 2004 and sent to abutters on August 19, 2004.

Board members: Zina Tillona, David Stowell, Joan Golowich and Barbara Ford

Submissions:

The applicants submitted the following documents:

- A Site Plan, Sheet SI-1, and Architectural Plans, Sheets A-1 through A-7, prepared by Soren Rono Designs, for C & S Investors, with a handwritten date of July 26, 2004,
- Two Perspective Sketches, showing the building located on the site and in relation to "The Elms", a historic home across Old Montague Road,
- A sample Master Deed for a condominium association,
- A sample Declaration of Trust for a condominium association
- A Management Plan describing the proposed units, parking, maintenance and trash removal.

The Planning Department submitted Memorandum #2004-27, which commented on Mr. Gross's presentation before the Amherst Historical Commission, as required by Condition #1 of the Special Permit ZBA FY2003-00016, and the Commission's recommendation of approval of the siting of the building and the architecture as presented in the architectural drawings referenced above.

The Planning Department also submitted a Memorandum dated September 2, 2004 and revised September 7, 2004, which commented on the size of the lot, its frontage and proposed lot coverage, previous permits, history of ownership, management of the property, and the Historical Commission's recommendations.

The Conservation Department submitted a document entitled "WPA Form 2 – Determination of Applicability" – RFD 04-0928, which gave the application a Negative Determination and stated that no Notice of Intent is required.

Site Visit: September 7, 2004

Board members Zina Tillona, David Stowell and Joan Golowich attended the site visit. Barbara Ford visited the site on a later date. At the site visit the Board observed:

- The location of the site, bordered on three sides by Montague Road (Route 63) and Old Montague Road;
- The location of the proposed driveway and house;
- The location of and proximity to the large historic brick home, known as The Elms, across Old Montague Road from the site;
- The steepness of the topography, from a high point on Old Montague Road, down to a low point at the culvert on the west side of Montague Road;
- The existing driveways exiting properties located on the west side of Old Montague Road, opposite the curb cut for the new driveway;
- The existing mature trees on the property, along Montague Road and near the proposed driveway exit, near the southwest corner of the property.

Public Hearing: September 9, 2004.

The public hearing was opened in the Town Room and, due to a lack of information concerning wetlands issues, was continued to October 14, 2004. No testimony was taken. David Stowell was on the panel on September 9, along with Zina Tillona and Joan Golowich.

Joan Golowich MOVED to continue the hearing to October 14, 2004. David Stowell SECONDED the motion. The Board VOTED unanimously to continue the hearing to October 14, 2004.

Continued Public Hearing October 14, 2004

The public hearing, which had been continued to this date, was continued again, due to a lack of information concerning wetlands issues. No testimony was taken. Mr. Gross requested that the hearing be continued to December 9, 2004.

David Stowell had resigned his position on the Board prior to this date. Barbara Ford took his place on the panel.

Joan Golowich MOVED to continue the hearing to December 9, 2004. Barbara Ford SECONDED the motion. The Board VOTED unanimously to continue the hearing to December 9, 2004.

Continued Public Hearing December 9, 2004

Mr. Gross presented the petition. He stated that, in accordance with Condition #1 of Special Permit ZBA2003-00016, he had presented the exterior elevations and

the proposed siting of the building to the Historical Commission, and had received approval of the elevations and siting. He brought sample condominium documents, including a Trust Agreement and Master Deed. The Board asked that Mr. Gross give them some background information on the proposal.

Mr. Gross stated the following:

- The site contains approximately one acre of land (39,400 square feet);
- It is located on Old Montague Road and Route 63 (Montague Road);
- The proposed building is a duplex and will take up a footprint of about 3,200 square feet;
- The new duplex will not block views of The Elms from Route 63;
- Most of the existing trees on the site will remain;
- The new house will be partially obscured by existing and proposed trees;
- The floor plans will change slightly, in that there will be 2-car garages;
- The main entries will be on the sides of the garages;
- There will be a patio in back of each unit;
- The master suite will be on the ground floor;
- The main entrances will face Route 63.

The Board inquired about the need for two-car garages. Mr. Gross explained that it was a market decision.

Mr. Gross went on to say that:

- The garages have been designed to accommodate storage of trash and recycling;
- The garages will be located near the kitchen, so the trash and recycling will be conveniently located;
- There will be a basement in each unit, with stairs down from the first floor;
- One of the goals of the design is to create an interesting building;
- There will be two bedrooms, an interior balcony and a bathroom on the second floor;
- The front elevation will have some areas that protrude and some that recede.

There was discussion of the garages and the articulation of the façade and how the proposed two-car garages would affect the look of the building.

Mr. Gross described the cross section through the house.

Ms. Ford expressed concern about the setback on the garage and whether the sight-distance was enough to allow someone to safely back out of the garages and to allow drivers to see each other when backing up.

Ms. Golowich asked about the common wall between the two units and whether it was soundproof. Mr. Gross responded that the wall will be solid concrete, with no holes through it. It will be a fire wall.

Bonnie Weeks, the Building Commissioner, stated that there are minimum code requirements for sound and fire. She also noted that there must be two points of egress from each unit on the main level.

Mr. Gross made the following statements:

- The washer/dryer units will be on the first floor, near the kitchen;
- The basement will be partially finished;
- There will be a room in one part of the basement.

Christine Brestrup, of the Planning Department, inquired about the number of cars which will be normally parked on the site and noted that the previous Special Permit had limited the number of cars on the site to five cars parked on a regular basis. The Board and Mr. Gross then discussed the number of cars that would be permitted to be parked on a regular basis, both in the garages and on the site. A total of six was proposed.

Mr. Gross stated that:

- The exterior lighting was proposed to be in the form of flood lights;
- The landscape plantings were proposed to be simple shrubs, such as rhododendrons, and the site would consist of mostly grassy areas.

Ms. Tillona inquired about the Management Plan.

Mr. Gross stated that the "condex" (condominium duplex) owners would act as the managers.

Ms. Golowich asked about the form of the condominium association, whether it would be properly established with an identification number and whether the word "condex" had any legal meaning.

Mr. Gross responded that the condominium association will be legally established with an identification number and will be designed to help the owners of the two units resolve issues that may arise between them.

He also noted that the term "condex" is commonly used in the eastern part of the state and that the condominium documents will be set up when the units are sold.

There was discussion about the condominium documents.

The Board asked Mr. Gross how soon he would have final condominium documents with the proper name of the condominium and management of the common areas clearly spelled out. Mr. Gross was not ready to give an answer to the question about condominium documents and a management plan at this time.

Barbara Ford MOVED to close the hearing. Joan Golowich SECONDED the motion. The Board VOTED unanimously to close the hearing.

Public Meeting

At the Public Meeting, Ms. Tillona stated that the Board had several options. The Board could:

- Approve the application as submitted;
- Declare that it didn't have enough information to decide at this time;
- Deny the application.

The Board expressed its concern about not having final architectural plans, site plans or a final management plan upon which to base its decision.

Ms. Weeks suggested that the Board, in discussing management issues, should focus on what it would like to include in the conditions, particularly with reference to driveway clearing and maintenance. She suggested that the Board set conditions that were not dependent on the project becoming a condominium and request that a clear Management Plan be submitted and referred to in the conditions of the Special Permit. She noted that her department can only enforce things that are clearly stated or referenced in the conditions of the Special Permit.

There was discussion of the nature of duplexes versus condominiums. The Board discussed whether the units could be rented, if they were condominiums. There was discussion of the condominium documents.

The Board discussed the possibility of continuing the hearing to obtain more information about the site plan and the management plan.

The Board discussed the fact that they were more concerned about the property being managed properly than they were about the nature of the ownership or rental of the units.

The Board discussed appropriate conditions that would ensure that the property would be managed properly.

Findings:

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 and 10.385 - The proposal is suitably located in the neighborhood, is compatible with existing Uses and other Uses permitted by right in the same District and reasonably protects the adjoining premises against detrimental or offensive uses on the site, because the neighborhood is residential and there are other multi-family houses located nearby, and there will be no detrimental or offensive uses on the site because the use is limited to residential uses and those accessory thereto.

10.382 and 10.383 - The proposal will not constitute a nuisance and will not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, because the use will be residential, the number of cars regularly parked on site will be limited to six, and the conditions of the permit require that a final site plan, describing parking, be submitted to the Board for its review prior to a Certificate of Occupancy being issued.

10.384 - Adequate and appropriate facilities will be provided for the proper operation of the proposed use, because the conditions of the permit require that a final building plan and site plan be submitted to the Board for its review and approval prior to a Building Permit being issued, and the preliminary plans submitted with the application indicate that the facilities will be adequate and appropriate for two dwelling units.

10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations because the parking requirements of the Zoning Bylaw (two spaces per dwelling unit) are met and there are two additional spaces provided for guests, but the number of cars allowed to be regularly parked on the site will be limited and no signs are proposed.

10.387 - The proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets and property because the conditions require that final architectural and site plans be submitted to the Board for review prior to a Building Permit being issued. The site plan submitted with the application provides adequate space for the parking of six cars. The plans to be submitted will address the issue of sight distance upon exiting the garages.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes, and methods of drainage, because sanitary sewage will be disposed of in a septic system, refuse and recyclables will be stored in the garage and the conditions of the permit require that a grading plan be submitted to the Board for review prior to issuance of a Building Permit. This grading plan will indicate the direction and destination of drainage from the new driveway. In addition, there is a culvert which runs under Route 63 which will accommodate the existing and proposed runoff from the site.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw because it protects and promotes the health, safety, convenience

and general welfare of the inhabitants of the Town of Amherst.

Zoning Board Decision

Joan Golowich MOVED to approve the application, with conditions. Barbara Ford SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit, with conditions to Steven Jay Gross and James Lumley, to modify the existing Special Permit ZBA FY 2003-00016, to build a duplex, with changes in the management plan, approval of a new site plan and changes in ownership, at Old Montague Road, (Map 2A, Parcel 38/41, R-O Zone).

ZINA TILLONA

JOAN GOLOWICH

BARBARA FORD

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.

NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Steven Jay Gross and James Lumley to modify existing Special Permit ZBA FY 2003-00016, to build a duplex, with changes in the management plan, approval of a new site plan and change of ownership, at Old Montague Road, (Map 2A, Parcel 38/41, R-O Zone), with conditions, as follows:

1. No more than two (2) cars shall be parked outside the building on a regular basis in addition to the four (4) cars parked in the garage.
2. Exterior lighting shall be pointed downward and shall not shine onto adjacent properties or streets.
3. The applicant shall submit a final revised Site Plan showing proposed exterior lighting, proposed landscaping (with locations, species and numbers of plants), and proposed grading for the driveway and parking area, prior to the issuance of a Building Permit, for review and approval by the Board at a public meeting.
4. The applicant shall submit final revised Architectural Plans and Elevations prior to the issuance of a Building Permit, for review and approval by the Board at a public meeting.
5. The owner of the property (be it a single individual or an entity such as a condominium association) shall be responsible for the following:
 - Plowing and maintenance of driveway and parking areas
 - Removal of trash and recycling
 - Storage of trash and recycling containers within the garage, except on pick-up days
 - Maintenance of landscaping
 - Maintenance of the exterior of the building.
6. The applicant shall submit a Management Plan to the Board, for review and approval at a public meeting, prior to the issuance of a Certificate of Occupancy. This Management Plan shall incorporate the management responsibilities enumerated in Condition #5, above, and shall include condominium documents, if the property is to be managed by a condominium association.

7. Any substantial changes in Site Plans, Architectural Plans or the Management Plan, after review and approval by the Board, shall require a modification of the Special Permit.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE